

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Canton and Morristown, New York)

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MM Docket No. 99-362
RM-9730

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NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 1999

Released: December 17, 1999

Comment Date: February 7, 2000

Reply Comment Date: February 22, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed jointly by Cartier Communications Inc. ("Cartier"), licensee of Station WVNC, Channel 244A, Canton, New York, and Waters Communications Inc. ("Waters"), licensee of Station WNCQ-FM, Channel 275A, Morristown, New York. Cartier and Waters request the substitution of Channel 275C3 for Channel 244A at Canton, the modification of Station WVNC's license accordingly, and the substitution of Channel 244C3 for Channel 275A at Morristown, and the modification of Station WNCQ-FM's license accordingly. Both licensees state their intention to apply for their respective channels, if allotted.

2. Cartier and Waters state that the public interest would be served by a grant of their joint request since it will enable both stations to operate on higher class channels and thus provide service to a greater number of people. In addition, they state that the proposed channel substitutions can be accomplished without accepting competing expressions of interest as the proposal constitutes an incompatible channel swap as set forth in Section 1.420(g)(3) of the Commission's Rules. They point out that an incompatible channel swap requires that the proposed channel swap between communities is mutually exclusive, requires the licensee in one of the communities to relinquish its channel to the licensee in the other community, and the allotments are the only available channels of that class available to each community, citing Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels, 60 RR 2d 114 at 120 (1980). In this case, they state that Channel 275C3 is the only Class C3 allotment available for Canton, is mutually exclusive with the use of Channel 275A at Morristown, that Channel 244C3 is the only available Class C3 channel available for Morristown and that it is mutually exclusive with the use of Channel 244A at Canton. Morristown and Canton are located approximately 33 kilometers apart.

3. We believe the proposal warrants consideration since it could enable both Station WVNC and Station WNCQ-FM to expand their coverage areas and improve their service. An engineering analysis has determined that Channel 275C3 can be allotted to Canton in compliance with the

Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 12 kilometers (7.4 miles) north to accommodate Cartier's requested site. Channel 275C3 at Canton would be short-spaced to Channel 276A at Valleyfield, Quebec, Canada. Channel 244C3 can be allotted to Morristown, with respect to domestic allotments, with a site restriction of 12 kilometers east to accommodate Water's desired transmitter site.¹ This allotment would be short-spaced to Channel 243A at Buckingham, Quebec, Canada. Concurrence in these allotments, as specially negotiated short-spaced allotments, by the Canadian Government must be obtained since both Canton and Morristown are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

4. As requested, we also propose to modify the licenses of Stations WVNC and WNCQ-FM to Channels 275C3 and 244C3, respectively. However, in order to qualify as an incompatible channel swap, all of the allotments have to be unique, that is, there are no other channels of the requested class available for allotment at all of the communities except the ones proposed to be exchanged between the other station(s). See Modification of FM Broadcast Station Licenses to Higher Class Co-channel and Adjacent Channels, supra, Colonial Heights, Tennessee, 9 FCC Rcd 6767 (1994), recon. denied, 11 FCC Rcd 18079 (1996). In this case, we are unpersuaded that such a situation exists. Rather, the staff analysis of this proposal shows that a second Class C3 channel is available for allotment at Canton. Station WVNC at Canton can upgrade on its own channel, to 244C3, without requiring any other change in the Table of Allotments. While the allotment of Channel 244C3 at Canton requires a site restriction of 20.8 kilometers (12.9 miles) west, at coordinates 44-33-26 NL; 75-25-48 WL, to comply with the spacing requirements to domestic allotments, as well as Canadian concurrence as a specially-negotiated short-spaced allotment, because of a short-spacing to Channel 243A at Buckingham, Quebec, and Station CKOI-FM, Channel 245C1, Verdun, Quebec, we do not believe this to be an impediment since Cartier has itself proposed to relocate Station WVNC in order to operate on Channel 275C3. Thus, while Station WNCQ-FM at Morristown cannot upgrade on any channel other than 244, and is thus dependent upon use of the channel currently being used by Station WVNC, the same is not true for Station WVNC. Therefore, we request comment on whether the proposed modification of licenses should be governed by the provisions of Section 1.420(g)(1) regarding non-adjacent channel upgrades, or Section 1.420(g)(3) regarding adjacent channel upgrades.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

¹ The coordinates for Channel 275C3 at Canton are 44-41-51 North Latitude; 75-07-35 West Longitude. The coordinates for Channel 244C3 at Morristown are 44-36-00 NL; 75-30-00 WL.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Canton, New York	244A	275C3
Morristown, New York	275A	244C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before February 7, 2000, and reply comments on or before February 22, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David G. O'Neil
Rini, Coran & Lancellotta, P.C.
1350 Connecticut Avenue, N.W., Suite 900
Washington, D.C. 20036-1701
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be

filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.